CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

# COUR EUROPÉENNE DES DROITS DE L'HOMME
# EUROPEAN COURT OF HUMAN RIGHTS

## THIRD SECTION

## DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 40984/98
by Hasan KARATAŞ
against Turkey
lodged on 26 February 1998

The European Court of Human Rights (Third Section), sitting on 22 June 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President,*
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN, *judges,*

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 26 February 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

# THE FACTS

The applicant, Mr Hasan Karataş, is a Turkish national who was born in 1940 and lives in Elazığ. He is represented before the Court by Mr Özcan Kılıç and Mr M. Ali Kırdök, lawyers practising in Istanbul.

## A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

### *1. The applicant's version of the facts*

Until October 1994 the applicant lived in Karaoğlan village of Tunceli. In October 1994 the applicant's village was forcibly evacuated by security forces on account of intense terrorist activities in the region. He owned a house, livestock and land in the village. Since the evacuation, the applicant and his family have been living in Elazığ.

On 9 July 1997 the applicant filed a petition with the Governor's Office in Tunceli and complained about the evacuation of his village and the ensuing destruction of his property.

On 14 July 1997 the applicant lodged another petition with the Deputy Prime Minister's Office containing the same complaints.

On 8 August 1997 the applicant received a letter from the County Governor of Ovacık, which stated:

> "The [military] operations still continue intensely in order to combat the separatist terrorist organisations in our district. ...
>
> With reference to your complaints in your petition our Government have been trying to find possible ways to solve the problem concerning the resettlement of the villagers. As soon as the [public order] is established for resettlement, you will be informed by the District Governor."

On 3 October 1997 the applicant received the same letter with respect to his petition of 14 July 1997 addressed to the Deputy Prime Minister's Office.

### *2. The Government's version of the facts*

The investigation carried out by the authorities indicated that the applicant had left his village of his own will. The security forces had not destroyed the applicants' village or forced them to leave their homes.

The official records indicated that there was no obstacle preventing villagers from returning to their homes and possessions in their villages. Persons who had left their villages as a result of terrorism had already started returning and regaining their activities in their villages.

On 14 July 2004 the Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism was passed by the Grand National Assembly and entered into force on 27 July 2004 ("Compensation Law"). That Law provided for a sufficient remedy capable of redressing the Convention grievances of persons who were denied access to their possessions in their villages.

In that connection Damage Assessment and Compensation Commissions were set up in seventy-six provinces. Persons who had suffered damage as a result of terrorism or of measures taken by the authorities to combat terrorism could lodge an application with the relevant compensation commission claiming compensation.

The number of persons applying to these commissions had already attained approximately 170,000. A further 800 persons, whose applications were pending before the Court, had also applied to the compensation commissions. Many villagers had already been awarded compensation for the damage they had sustained.

### B. Relevant domestic law

A description of the relevant domestic law can be found in the Court's decision of *İçyer v. Turkey* (no. 18888/02, §§ 44-54, 12 January 2006) and in its judgment of *Doğan and Others v. Turkey* (nos. 8803-8811/02, 8813/02 and 8815-8819/02, §§ 31-35, ECHR 2004-VI).

## COMPLAINTS

The applicant complained of a violation of Articles 3, 5, 6, 8, 13, 14, and 18 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Under Article 1 of Protocol No. 1, he complained that he had been deprived of his right to peaceful enjoyment of his possessions as his house had been destroyed and he had been forced to leave his village.

He complained that his forcible displacement and the destruction of his property had given rise to a violation of Articles 3, 5 and 8 of the Convention.

He submitted under Articles 6 and 13 that he had not been granted a right of access to a court and that there had been no effective remedy in domestic law to provide for redress for his Convention grievances.

Under Article 14, in conjunction with the above-mentioned Articles, he alleged that he had been subjected to discrimination on account of his ethnic origin.

Finally, he submitted that his rights under Articles 5, 6, 13 of the Convention and Article 1 of Protocol No. 1 to the Convention had been

violated, that no legal measure had been taken to prevent these violations and that his right to enjoy his aforesaid rights had been limited in violation of Article 18.

# THE LAW

## A. Complaints under Articles 3, 5 and 8 of the Convention and Article 1 of Protocol No. 1

The applicant complained that his forcible displacement and the destruction of his property as well as the authorities' refusal to allow him to return to his village had given rise to a breach of Articles 3, 5 and 8 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

**Article 3 of the Convention**

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

**Article 5 of the Convention**

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save ... in accordance with a procedure prescribed by law"

**Article 8 of the Convention**

"1. Everyone has the right to respect for his private and family life [and] his home...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

**Article 1 of Protocol No. 1**

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

At the outset, the Court notes that the applicant was not deprived of his liberty falling under Article 5 (see *Jancova v. Slovakia* (dec.), no. 51233/99, 8 October 2002). Given that it is free, in the performance of its task, to

attribute to the facts of the case a characterisation in law different from that given by the applicant (see *Camenzind v. Switzerland,* judgment of 16 December 1997, *Reports of Judgments and Decisions,* 1997-VIII, § 50), the Court considers it appropriate to examine the applicant's Article 5 complaint under Article 8 instead.

The Government raised an objection to the Court's jurisdiction, arguing that the applicant had failed to exhaust domestic remedies as he had not availed himself of the new remedy offered by the Compensation Law. In that connection they claimed that the mechanism which they had set up subsequent to the *Doğan and Others* judgment of 29 June 2004 was capable of providing redress in respect of the applicant's complaints and offered a reasonable prospect of success.

The Court observes that under the Compensation Law it is open to persons whose applications are pending before the Court, such as the applicant in the present case, to lodge until 3 January 2007 an application with local compensations commissions in order to claim compensation for the damage they had sustained as a result of their displacement, destruction of property and inability to gain access to their possessions in their villages in south-east Turkey.

The Court has already examined that remedy and found it effective in respect of complaints about the alleged forced displacement and denial of access to possessions in the villages in south-east Turkey. In particular, it considered that the new remedy was accessible and provided reasonable prospects of success (see *İçyer*, cited above, §§ 73-87).

In the light of the above, the Court considers that there are no exceptional circumstances capable of exempting the applicant from the obligation to exhaust domestic remedies.

It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

## B. Complaint under Articles 6, 13 and 18 of the Convention

The applicant submitted that he was not granted a right of access to a court to request compensation for the destruction of his property. He further complained that there was no effective domestic remedy capable of providing redress for his Convention grievances. Finally, he argued that no legal measure was taken to prevent the violation of his Convention rights.

He relied on Articles 6, 13 and 18 of the Convention, which provide:

**Article 6**

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

**Article 13**

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

**Article 18**

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

The Court considers that these complaints collectively relate to the availability of effective remedies to the applicants within the meaning of Article 13. The Court reiterates its finding that the Compensation Law does provide applicants in these types of cases with an effective remedy in respect of their complaints concerning alleged forced displacement, destruction of property and/or denial of access to their property.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## C. Complaint under Article 14 of the Convention

The applicant maintained that because of his Kurdish origin he had been subjected to discrimination in breach of Article 14 of the Convention, in conjunction with Articles 3, 5, 6, 8, 13 and 18 of the Convention and Article 1 of Protocol No. 1. Article 14 provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government did not address this issue.

The Court notes that in its *Doğan and Others v. Turkey* pilot judgment (cited above, §§ 118-133) it has examined a similarly framed complaint and found it unsubstantiated. It finds no particular circumstances in this case which would require it to depart from its findings in the aforementioned case.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President